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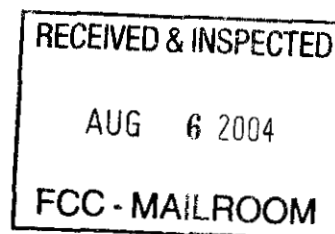
COMMERCE CENTER
1810 CHAPEL AVENUE WEST
CHERRY HILL, NJ 08002
(856) 661-1900
FAX: (856) 661-1919
WWW.FLASTERGREENBERG.COM

J. PHILIP KIRCHNER, ESQUIRE
Member of NJ & PA Bar
Direct Dial: (856) 661-2268
E-Mail: phil.kirchner@flastergreenberg.com
PLEASE RESPOND TO CHERRY HILL

August 6, 2004

VIA FACSIMILE & FEDERAL EXPRESS

Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743



**Re: IN THE MATTER OF REQUEST FOR REVIEW BY RELCOMM, INC. OF
DECISION OF UNIVERSAL SERVICE ADMINISTRATOR
CC Docket No. 02-6
SLD decision 1022916 and 1023492
Year Six E-Rate
Billed entity #123420: Atlantic City Board of Education**

Dear Sir or Madam:

This office represents RelComm, Inc., a New Jersey corporation with its principal place of business located at 408 Bloomfield Drive, Suite 3, West Berlin, New Jersey. RelComm is in the business of designing, installing and maintaining computer networks, including both hardware and software, for, among others, municipal and other public entities, including various school boards. RelComm is an "aggrieved party" which participated in the bid process for entity #123420, the Atlantic City Board of Education ("ACBOE"), for Year Six of the E-Rate program, and hereby appeals from the decision of the SLD dated July 14, 2004, granting funding request numbers 1022916 and 1023492. As set forth more fully below, the basis of this appeal is

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List ABCDE

190 SOUTH MAIN ROAD
VINELAND, NJ 08360
(856) 691-6200
FAX: (856) 696-8150

216 NORTH AVENUE
CRANFORD, NJ 07016
(908) 245-9021
FAX: (908) 245-9031

2900 FIRE ROAD, SUITE 102A
EGG HARBOR TWP., NJ 08234
(609) 645-1881
FAX: (609) 645-9932

1833 MARKET STREET, SUITE 1215
ELEVEN PENN CENTER
PHILADELPHIA, PA 19103
(215) 569-1022

913 N. MARKET STREET, SUITE 702
WILMINGTON, DE 19801
(302) 351-1910
FAX: (302) 351-1919

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prohibited behavior by the applicant (ACBOE), its consultant (Alemar Consulting and its principal Martin Friedman (collectively, "Friedman")), and ACBOE's selected vendor (Micro Technology Groupe, Inc., SPIN143008940, ("MTG")). RelComm alleges that ACBOE, Friedman and MTG violated specific SLD regulations and FCC orders in procuring the funding commitment for Year Six.

These, and other allegations, are currently the subject of a lawsuit pending in the Superior Court of New Jersey, Atlantic County, Docket number ATL-L-477-04. A copy of the complaint is attached as Exhibit A. Also enclosed is the affidavit of Michael Shea, the president of RelComm, which was submitted in connection with that pending litigation. The facts set forth below are sworn to, and incorporated herein by reference, in that affidavit.

I. Question presented for review

Whether ACBOE's, Alemar's, Friedman's and MTG's acts, omissions and violations of specific SLD regulations and FCC orders in connection with the procurement of funding for Year Six warrant (1) a reversal of the SLD's decision to fund ACBOE's Year Six application, and/or (2) suspension or disbarment of these entities from participation in the E-Rate program.

II. Background

In early 2003, ACBOE indicated its intention to submit an application for funding to the SLD under Year Six of the E-Rate program. ACBOE solicited bids from qualified vendors to provide ACBOE with the services and equipment to be requested by ACBOE in its Year Six application. ACBOE, acting through its superintendent, Fred Nickels, without the approval of the Board Members, then hired Alemar Consulting through its President, Friedman, as a consultant to manage its bidding process for Year Six and to recommend a winning bidder to

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receive the contract. Alemar has previously acted as the bid manager for other school districts in the Commonwealth of Pennsylvania and in New Jersey.

ACBOE's representative informed RelComm that it would not be selected as a vendor for any part of ACBOE's Year Six application and, in fact (following a bidding process tainted by numerous irregularities), ACBOE selected another vendor, MTG, for participation in its Year Six E-Rate application at the recommendation of Alemar.

Importantly, in every instance in which Alemar has managed the E-Rate bid process on behalf of a school district, a total of 31 times dating back to Year 3 of the E-Rate program, MTG has received a contract award each and every time. Of the 11 school districts where MTG is currently doing work, 10 of these districts had their bid process managed by Alemar. A copy of a table demonstrating this relationship is attached as Exhibit B. Indeed, the USAC SLD website indicates that on all the Form 470s prepared by Alemar, the bid specifications and the 471s have all of the same vendors for all of the entities regardless of size and location. A breakdown of all E-Rate bidding processes Friedman/Alemar managed dating back to Year 3 is attached as Exhibit C.

MTG's winning bid in this instance was announced at a meeting on February 11, 2003, at which ACBOE announced that it was submitting an application for Year Six E-Rate funding in the amount of \$3.6 million. The SLD announced its funding commitment for this bid on July 14, 2004. However, as set forth more fully below, the MTG bid and the application submitted to SLD for Year Six funding did not comply with the bid specifications given to RelComm and other bidders.

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III. Specific violations and prohibited behavior

ACBOE's Year Six E-Rate program bidding process violated federal law and state law in the following respects:

(1) The Form 470 drafted by Alemar for ACBOE violated E-Rate program rules and state bidding statutes. The specifications contained in the Form 470 provided no details as to what ACBOE was seeking from bidders and was not related in any way to ACBOE's own Technology Plan. A copy of the bid specifications is attached as Exhibit D. Instead of describing with specificity the items solicited in the bid, it requested a "best solution" proposal to include "all items eligible" for funding under the E-Rate program. This "best solution" request is a violation of FCC's Third Order and Report because it eliminated the competitive bidding process because no adequate comparisons could be done.

(2) After the Form 470 application was posted, which contained the specifications for the Year Six bid, RelComm posed a number of technical questions to Alemar so that it could submit a proper bid. To illustrate, RelComm tried on numerous occasions to get clarification from Alemar and ACBOE as to the exact locations of the equipment to be installed, but to no avail. In an e-mail to Friedman on January 22, 2003 RelComm posed several technical questions regarding the bid specifications to which Friedman replied: "The district has not supplied us with the level of detail for which you are asking. As such, we are asking vendors to take a walk-through and provide the district with a 'best solution.'" Copies of e-mail and correspondence regarding these inquiries, and responses thereto, are attached as Exhibit E.

(3) RelComm's confusion was caused by the fact that Alemar prepared one 470 Form for the entire district (excluding the High School facility) and then separate 470 Forms for each

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separate building in the district (again, with the exception of the High School facility). RelComm finally resorted to submitting separate bids for the entire district and for each specific location. Whenever RelComm requested clarification, Alemar responded that adequate responses and information could not be obtained from ACBOE, but that all questions would be answered at the on-site tour of the ACBOE facilities.

(4) ACBOE stated that only vendors who participated in an on-site tour of the Atlantic City School District buildings and facilities, which was conducted on January 24, 2003 by Alemar, would be considered qualified bidders for ACBOE's Year Six application. The specifications stated: "Vendors are required to participate in a walk-through of these premises in order to provide a 'best solution' for all internal connections, excluding the servers detailed." This is a violation of E-Rate program rules and federal bidding statutes, which require that all qualified vendors, no matter where geographically situated, be eligible to bid on federally funding grant projects. ACBOE utilized no state or local procedures that would permit that requirement, nor did it select box "12" in "Block 2" on the Form 470.

(5) That tour itself was tainted by misinformation. For example, ACBOE told bidders at the walk-through that ACBOE was only interested in expansion of its existing network structure and that the expansion must be compatible with the existing network. However, the contract awarded to MTG includes \$1.3 million for the purchase of new network equipment, including 49 new servers, which are meant to replace the existing network, not expand it. When applicants requested clarification of certain aspects of the bid request at the walk-through, they were informed that their questions could not be answered. Indeed, ACBOE's representative stated several times to the vendors present at the tour that the district was seeking a "best

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solution," and that it was up to the applicant to provide a proposal. A copy of the videotape from this tour is enclosed and identified herein as Exhibit F.

(6) During that tour, RelComm again posed its questions but was told by the person conducting the tour, John Holt of Informed Resources, that he did not have answers to any of RelComm's questions. In addition, Alemar provided misinformation to RelComm and the other prospective bidders at the walk-through.

(7) For example, according to the bid specifications contained in the Form 470, the High School facility was only to receive telecommunications services, and was not to be included in the bid for internal data connections. Indeed, the walk-through videotape captured the Alemar and ACBOE representatives explicitly stating this several times. However, contrary to the bid specifications, MTG received a contract that included data equipment and services for the High School, totaling \$227,391.

(8) In addition, Alemar told prospective bidders that the bid for internal connections was for network enhancements, not a complete overhaul of the network, but the contract awarded to MTG includes the replacement of a significant portion of the network, including all of the existing wiring, which is only 3 years old and is covered by 17 remaining years of the original 20 year warranty.

(9) During the walk-through John Holt (an employee of Informed Resources) represented himself as an employee of Alemar. However, as set forth in Exhibit C, Informed Resources (SPIN 143026063) has received numerous E-Rate contracts over the years through Friedman. FCC rules state that vendors who are bidding on E-Rate contracts are barred from developing the bid specifications for the applicant's 470/471 forms. The USAC website also

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states that the applicant may not delegate responsibility for evaluating bids to anyone associated with one of the bidders: "The fundamental principle on which the E-Rate Program is based is that the applicant has conducted a fair and open competitive procurement by which they (sic) decided upon the services they are ordering for E-rate discounts [The applicant must avoid actions that] would furnish the Services Provider with "inside" information or allow them (sic) to unfairly compete in any way The FCC has ruled that the applicant may not delegate this evaluation role to anyone associated with a Service Provider." USAC Website (www.sl.universalservice.org) (Ch. 5 - Service Provider Role in Assisting Customers). See also Exhibit D (the bid specifications) in which Holt is identified as the contact person for Alemar and Exhibit G (an e-mail from Friedman identifying Holt as the individual conducting the walk-through).

(10) Alemar conducted a second unannounced walk-through of the High School facilities, to which RelComm and the other bidders were not invited. Only MTG was told by Alemar to include the High School facilities in its bid, so MTG's winning bid was the only one that included the High School building. The bid specifications distributed to RelComm and the other bidders made no mention of the internal connections at the High School facility. The bid specifications drafted by Alemar and posted by ACBOE were conspicuous in their failure to include the High School facilities in the bid. Significantly, the applicants present at the High School walk-through were vendors which had previously won contracts through Friedman at other school districts. A copy of the sign-in sheet for that tour is attached as Exhibit H.

(11) RelComm believes that this omission (the failure to include the High School facilities in the bid specifications) was intended by ACBOE, because inclusion of the high school

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student body in the E-Rate program calculation would have lowered the percentage of funding provided by the federal government. In prior years, with the High School students included in the calculation, ACBOE had submitted its Form 471 indicating that 87% of its student body participated in the school lunch program. By excluding the High School from its Year Six Forms 470 and 471, ACBOE was able to increase its school lunch percentage to 90%, thereby making it more likely that its request would be funded because only school districts and schools whose school lunch participation level is at 90% or higher are guaranteed funding under E-Rate program regulations.

(12) MTG's winning bid included an award for items that were not included in the bid specifications. A copy of the MTG's bid is attached as Exhibit I. For example, the award to MTG included \$800,000 to install a video PVBX, which was not contained anywhere in the specifications published by ACBOE. The Form 470 and the bid specifications supplied by Friedman identified only video equipment consisting of EMMI, MCU, enhancer, and MptCU amplifiers, VCM; a video PVBX system is completely different from such equipment and consists of different components and functions. The FCC rules state that an applicant cannot seek discounts for services in a category of service on the Form 471 if those services in those categories were not indicated on a Form 470. The SLD eligible services list delineates this equipment and functions.

(13) In addition, the award to MTG included equipment to be installed at locations that were not mentioned in the specifications. A copy of the Form 471, which includes an award for the Atlantic City High School, is attached as Exhibit J. Indeed, during the litigation currently pending in the Superior Court of New Jersey, and in a prior litigation filed in the United States

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District Court for the District of New Jersey, MTG produced documents upon which it relied in preparing its Year Six bid; documents which were not given to other prospective vendors. Copies of these documents are attached as Exhibit K. Those documents include information and specifications about video PVBX equipment, network diagrams of ACBOE's network infrastructure and existing wiring LAN breakdown of all the schools within the district including the Atlantic City High School.

(14) The bid specifications published by ACBOE and drafted by Alemar were so confusing and misleading that the bids submitted in response to them ranged from approximately \$200,000 to \$3.6 million, a variation of 1800%. A ranking of the actual bid dollar amounts is attached as Exhibit L. Of the eight internal connections bids, three were disqualified for allegedly bidding items not listed in the bid specifications. A fourth bidder was disqualified for faxing its bid (even though that vendor was told that this would be acceptable considering time constraints). And none of the remaining three bids included cabling, video PVBX or the high school. MTG's winning bid was the highest at \$3.6 million. The next highest bid was less than half that amount at \$1.4 million, but it was disqualified because it contained items that do not qualify for E-rate program funding. MTG's bid, however, also contained \$86,500 of non-E-Ratable items, but it was not disqualified by ACBOE or Alemar. RelComm's bid is actually the lowest responsive bidder for each of the items listed in the actual specifications.

(15) RelComm believes that ACBOE and Alemar gave MTG either different specifications or modified specifications that were not given to RelComm or other bidders. Thus, the bid awarded to MTG was rigged and fraudulent, in that MTG was awarded the bid

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without any competition from other bidders, who were bidding on specifications that were different from those on which MTG was bidding.

(16) The unlawful nature of MTG's winning bid is also demonstrated by the wastefulness of its expenditures at taxpayers' expense. For example, the MTG contract award calls for rewiring of the entire ACBOE network, despite that the existing warranty is only 3 years old and has 17 years remaining on the 20-year warranty included with its purchase. Indeed, the award calls for new web/e-mail/DNS/DHCP servers, which duplicate ACBOE's internal connections installed pursuant to the Year Four E-Rate award which could run the proposed new operating system. The FCC regulations specifically provide that price is the most important factor in selecting an E-Rate service provider. See 47 C.F.R. §54.511(a); see also 47 C.F.R. §54.504(a) (price is most important factor to consider in selecting E-Rate program service provider); *Universal Service Order*, 12 FCC Rcd at 9029 ¶ 480 (noting that the competitive bidding process ensures that the eligible entity receives information about all telecommunication choices and receives varying, competitive bids, which preserves the fund for other eligible entities) and 8950 n.819 (addressing whether safeguards were needed to prevent a bidder from driving out competitors). Indeed, applicants are required to undertake a technology assessment before making a request for services. 47 U.S.C. 254(h)(1)(B); *Universal Service Order*, 12 FCC Rcd at 9077-78 ¶¶ 572-574.

(17) The federal regulations explicitly state that the E-Rate "competitive bid requirements apply in addition to state and local competitive bid requirements and are not intended to preempt state or local requirements." 47 C.F.R. § 4.504(a). In fact, not only do the regulations indicate that the minimal E-Rate bidding requirements do not preempt state and local

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competitive bid requirements, but the E-Rate regulations also indicate that schools must comply "with all applicable state and local procurement processes." 47 C.F.R. § 54.504(b)(2)(vi). In this case the New Jersey Department of Education found that Friedman's management of the Year Six bidding process violated state and local bidding laws because the consulting contract was not bid appropriately. ACBOE was subsequently fined by the New Jersey Department of Education for these actions.

(18) The SLD rules state that if 30% or more of the applicant's request is ineligible the FRN itself is ineligible for funding. 47 C.F.R. 54.504(c)(1). ACBOE's bid specifications for Year Six do not include a PVBX, and the bid manager specifically stated to vendors during the bid conference that ACBOE was not seeking a network chassis (which was in fact part of MTG's winning bid). These items alone constitute over 30% of the line item.

IV. Conclusion

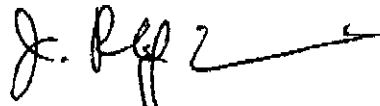
For all of these reasons, RelComm requests a review of the SLD's decision funding Year Six of ACBOE's E-Rate application, and that that funding decision be stayed pending full investigation by the Commission of these improprieties. RelComm further requests (1) a reversal of the SLD's decision to fund ACBOE's Year Six application, and (2) suspension or disbarment of the entities involved from participation in the E-Rate program.

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For further information regarding this appeal, you may contact the undersigned at the address and telephone number listed above.

Very truly yours,

FLASTER/GREENBERG P.C.

A handwritten signature in black ink, appearing to read "J. Philip Kirchner", with a long horizontal flourish extending to the right.

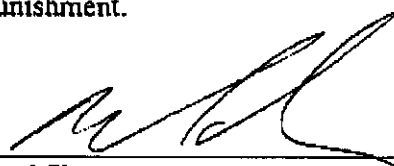
J. Philip Kirchner

Enclosures (via overnight delivery only)

cc: Deborah Weinstein, Esquire (on behalf of Alemar Consulting and Martin Friedman)
Michael J. Blee, Esquire (on behalf of ACBOE)
Ralph Kelly, Esquire (on behalf of Micro Technology Groupe, Inc.)
Schools and Libraries Division
(all with enclosures)

VERIFICATION OF REQUEST FOR REVIEW

I, Michael Shea, am the president of RelComm, Inc., the aggrieved party which has filed the attached Request for Review. I certify that I have read the Request for Review and that the foregoing factual statements made in support thereof are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

A handwritten signature in black ink, appearing to read 'M. Shea', is written over a horizontal line.

Michael Shea
RelComm, Inc.

Dated: August 6, 2004

PROOF OF SERVICE

I, the undersigned, am an employee of Flaster/Greenberg P.C., attorneys for the Plaintiff, RelComm, Inc., with regard to the above-captioned matter.

1. On August 6, 2004, I forwarded via facsimile a Request for Review By RelComm, Inc. of Decision of Universal Service Administrator (without enclosures) and via Federal Express overnight delivery (with enclosures) to the Federal Communications Commission, Office of the Secretary, 9300 East Hampton Drive, Capitol Heights, MD, 20743, one copy:

2. On August 6, 2004, I also caused a copy of the Request for Review By RelComm, Inc. of Decision of Universal Service Administrator (with enclosures) to be forwarded via Federal Express overnight delivery to the following:

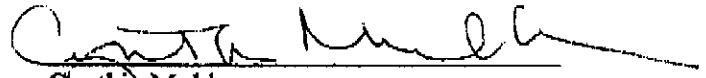
Michael J. Blee, Esquire
Rovillard & Blee
Bayport One
8025 Black Horse Pike
West Atlantic City, NJ 08232
(On behalf of Atlantic City Board of Education)

Ralph J. Kelly, Esquire
Abrahams, Loewenstein & Bushman
41 Grove Street
Haddonfield, NJ 08033
(On behalf of Micro Technology Groupe, Inc.)

Deborah Weinstein, Esquire
The Weinstein Firm
225 West Germantown Pike, Suite 204
Plymouth Meeting, PA 19462-1429
(On behalf of Martin Friedman and Alemar Consulting)

Schools and Library Division
Correspondence Unit
P.O. Box 125
80 South Jefferson Road
Whippany, NJ 07981

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.


Cynthia Muldoon
Legal Secretary